IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 5169 of 2007(M)

OS.125/2002 of PRL.SUB COURT,THRISSUR
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PETITIONER:

KABEER,S/O.PANIKKASSERY AHAMMU,THANNYAM VILLAGE AND DESOM,THRISSUR TALUK.

BY ADV. SRI.K.JAYAKUMAR
SMT.GEETHA P.MENON

RESPONDENTS:
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1. **KADEEJA BEEVI,W/O.PANIKKASSERY VEETTIL LATE KUNHUMON, NATTIKA AMSOM,DESOM,CHAVAKKAD TALUK.**

2. **SONA D/O.KADEEJA BEEVI, IN -DO- -DO-**

3. **SHYNI (MINOR) D/O.KADEEJA BEEVI -DO- REPRESENTED BY HER GUARDIAN MOTHER SMT.KADEEJA BEEVI.**

4. **SAJANA,(MINOR) D/O.KADEEJA BEEVI, IN -DO-DO.... REPRESENTED BY HER GUARDIAN MOTHER,SMT.KADEEJA BEEVI.**

5. **PATHUMMA BEEVI,W/O.VALIYAPURAYIL LATE AHAMMU, PERINGOTUKARA DESOM,THANNYAM VILLAGE, THRISSUR TALUK.**

6. **SHAKKEER, S/O.VALIYAPURAYIL LATE AHAMMU, IN -DO-..DO....**

7. **SHAJU, S/O.VALIYAPURAYIL LATE AHAMMU, IN -DO-DO....**

8. **SHAMEELA, D/O.VALIYAPURAYIL LATE AHAMMU,IN -D0-DO....**

9. **FASEELA, D/O.VALIYAPURAYIL LATE AHAMMU, -DO-..DO....**

BY ADV. SMT. GEETHA P.MENON for R1 to R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007 ALONG WITH WPC NO. 31325 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.5169/2007 M

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE APPLICATION, I.A.2909/2006 DTD. 07/04/2006 FILED BY THE PETITIONER IN O.S.NO.125/2002 ON THE FILE OF THE PRINCIPAL SUB COURT, THRISSUR.**

EXT.P2: **COPY OF THE OBJECTION DTD. 07/06/2006 FILED ON BEHALF OF RESPONDENTS 5 TO 9 IN I.A.NO.2909/2006 IN O.S.NO.125/2002 BEFORE THE PRINCIPAL SUB JUDGE,, THRISSUR.**

EXT.P3: **COPY OF THE ORDER DTD. 10/10/2006 PASSED BY THE LEARNED PRINCIPAL SUB JUDGE, THRISSUR IN I.A.NO.2909/2006 IN O.S.NO.125/2002.**

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

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W.P.(C) Nos.31325/2006 &5169 OF 2007

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Dated this the 9th day of August 2007

JUDGMENT

W.P.(C) No.31325 of 2006 is filed against the order of the Principal Sub Judge, Thrissur in I.A.No.2971 of 2006 in O.S.No.125 of 2002 and W.P.(C) No.5169 of 2007 is filed by the 6th defendant in the suit whereby his prayer for setting aside the ex parte order has been disallowed by the court in I.A.No.2909 of 2006 in O.S.No. 125 of 2002. It is true that the evidence had been adduced in the matter. A perusal of the order of the court below would reveal that even in the plaint, there is an averment to the effect that the right of the 6th defendant had been given to the plaintiff by virtue of a document No.203 of 1996. Now what the plaintiff wants by way of amendment is to request the court to allot the share of the plaintiff and the 6th defendant together so that it can be conveniently worked out. If really there is a sale of the property of the 6th defendant in favour of the plaintiff then allotment of share to the 6th defendant may not arise because the plaintiff will step into the shoes of the 6th defendant by virtue of the document of the year 1996. But it is a matter that can be decided only after

evidence and therefore by allowing the prayer to have a joint allotment of the share of the plaintiff and the 6th defendant as one lot, no inconvenience should be caused to any party because it will reduce the complication at a later point of time. I feel that the court below did not entertain the application because it is a belated application which came into effect only when evidence has started. The adjudication of the plaintiff's right with respect to the purchase of the share of the 6th defendant is also a necessary matter for a proper determination of the suit.

2.Therefore the order under challenge is set aside and the amendment application is allowed. Needless to say that the contesting defendants are at liberty to file fresh additional written statement. So far as the other writ petition is concerned, the matter is now pending before the court and the plaintiff is claiming right over the right of 6th defendant by virtue of a document .When he wants to come before the court by setting aside an ex parte order it should be allowed, for, there can be a proper adjudication of the matter. Therefore the said application is also liable to be allowed.

Therefore the writ petitions are allowed and the orders under challenge are set aside and the amendment as well as the prayer for setting aside the ex parte order is allowed and the court below is directed to instruct the plaintiff to carry out the amendment and also direct the 6th defendant to

file written statement, if any, and also to permit the other contesting defendants to file additional written statement in support of their contentions.

M.N.KRISHNAN, JUDGE

Cdp/-